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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

PLANTRONICS, INC.,  
  
Plaintiff and Respondent,

v.

VICKI BARONE,  
  
Defendant and Appellant.

H046058  
(Santa Cruz County  
Super. Ct. No. 18CV01735)

Appellant Vicki Barone appeals from a workplace violence restraining order granted to Plantronics, Inc., protecting several of its employees and their family members under Code of Civil Procedure section 527.8.<sup>1</sup>

Barone raises two claims on appeal. First, she contends the restraining order was not supported by sufficient evidence that she made any credible threat of violence. Second, she contends the order infringed on her constitutional right to serve a summons. Finding no error, we will affirm the order.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Barone is the wife of Dan Barone, a former Plantronics employee who was terminated in June 2017. In June 2018, Vicki Barone, acting on her husband's power of attorney, informed Plantronics she intended to file suit in Santa Cruz County Superior Court for wrongful termination. On June 12, 2018, Barone e-mailed Plantronics to

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure except as otherwise indicated.

inform them she was en route to the courthouse, adding, “Sicilian women tend to be highly protective of their family, so that was probably even more of horrific hell for me than it was for Dan. [¶] Maybe now the two of you might want to ‘start looking for a different line of work,’ because I am fervently hoping that ‘the clock is ticking.’ ” The e-mail included a cartoon image depicting a woman holding up two foam hands with the letters “F” and “U” and the middle fingers of each hand extended.

The next day, Barone e-mailed Plantronics to inform them the suit had been filed and that a “[s]ummons will be forthcoming within the next 24 hours.” She asked to whom she should serve the summons for Plantronics. Michael Schlemmer, an outside attorney representing Plantronics, informed Barone by e-mail on June 13, 2018, that he was authorized to accept service for Plantronics and its employees. Schlemmer asked Barone to direct all communications with Plantronics or its employees to his firm, Morgan, Lewis & Bockius LLP. Barone responded that she would prefer to serve the CEO personally, and she added that she believed there was no law preventing her from communicating directly with Plantronics. In a follow-up e-mail, Barone wrote, “Due to the malicious intent of their actions, we feel like a more appropriate way to do this would be a highly public ambush for them all at their place of work.”

Around 9 p.m. that evening, Barone appeared at the home of Robert Wilson, the father-in-law of Rick Guzman. Guzman had previously supervised Dan Barone at Plantronics. The parties dispute the precise nature of the confrontation between Barone and the Wilsons at their home. According to Barone, she was attempting to serve papers on Guzman. She knocked on the door twice, waited, and rang the doorbell, whereupon “an older woman opened the door, and I stepped into the landing and asked if Rick Guzman was home.” At that point, Guzman’s wife “jumped up and started to scream, and two huge 200-250 lb men came running in from the other room. I said I am serving a summons, and Mrs. Guzman lurched forward and slapped the papers out of my hands, and then tried to slam the door on me, but I was in the landing area so she only succeeded

in slamming my body between the door and the door jam [*sic*]. At this point the older man that was stocky pushed me against the wall and held me there with his forearm across my chest.” Barone tried to document the incident with her phone and threatened to call the police, at which point she was allowed to leave. She later called the police to report an assault.

The occupants of the Wilson home described Barone’s conduct in more threatening terms. They stated Barone pushed and forced her way into the home, causing them to fear for their safety and the safety of their children. Robert Wilson, Guzman’s father-in-law, stated, “My thought was that this is a home invasion and I have my family, including my three grandchildren in the house and it is under attack.” After the confrontation, they saw Barone parked in front of a neighbor’s house with her lights on. She then slowly drove by the house, parked at another location nearby, and eventually moved to another neighbor’s house. The next day, Plantronics hired two private security officers at its headquarters in the event Barone attempted to approach its executives.

On June 15, 2018, Plantronics petitioned for a workplace violence restraining order to protect Guzman, Schlemmer, several members of the Wilson family, and several Plantronics employees. The petition included several e-mail exchanges between Barone and Plantronics, as well as sworn declarations from Schlemmer and three of the Wilson family members who witnessed the confrontation. The trial court issued a temporary restraining order and set a hearing date on the matter. Barone filed a written response opposing the order and setting forth her version of the facts as described above.

At a hearing on the matter, the trial court relied largely on the parties’ written filings, but the court also received sworn statements from Barone and heard argument from counsel for Plantronics. Barone admitted the “angry” and “hostile” nature of her e-mails, and she conceded that her attempt to serve Guzman at the Wilson residents was a mistake. She also admitted to entering the home, stating, “I stepped into the landing after knocking twice and ringing the doorbell, and it wasn’t until Ms. Wilson started screaming

that the big man came running from the living room but I was already in the house.” When the court asked her about her e-mailed threat to conduct a “highly public ambush for them all at their place of work,” Barone justified this on the ground that Plantronics and its attorneys had treated her husband poorly: “So my point was if you are going to treat people like that why wouldn’t I just come to the place of work and just hand you your summons? That’s what I meant by an ambush. I didn’t obviously mean—that’s what I considered what they did to him was an ambush.” She disavowed any future intent to personally contact the opposing parties again. She added, “I learned my lesson,” and explained that “it was a moment of very heated emotional charge” during which she had gotten “hotheaded.”

The trial court found “clear and convincing evidence of work place harassment” and found that Barone had not sufficiently rebutted the evidence. Accordingly, the court granted a one-year restraining order against Barone protecting Rick Guzman, Michael Schlemmer, three members of the Wilson family, and four Plantronics employees.

## **II. DISCUSSION**

Barone raises two claims on appeal. First, she contends the order was not supported by sufficient evidence that she made a credible threat of violence. As part of this claim, she contends the order covers persons not entitled to protection under the statute. Second, she argues that the order infringes on her constitutional right to serve a summons. Plantronics contends the record holds sufficient evidence to support the order as shown by Barone’s e-mails and course of conduct. Plantronics refutes her claim that this conduct was justified by any constitutional right to service of process.

### ***A. Legal Principles***

“Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an order after hearing on behalf of the employee and, at the discretion of the court, any

number of other employees at the workplace, and, if appropriate, other employees at other workplaces of the employer.” (§ 527.8, subd. (a).) “ ‘Course of conduct’ is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, facsimile, or computer email.” (§ 527.8, subd. (b)(1).)

“ ‘Credible threat of violence’ is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.” (§ 527.8, subd. (b)(2).)

“ ‘Unlawful violence’ is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.” (§ 527.8, subd. (b)(7).)

“ ‘[T]o obtain a permanent injunction under section 527.8, subdivision (f), a plaintiff must establish by clear and convincing evidence not only that a defendant engaged in unlawful violence or made credible threats of violence, but also that great or irreparable harm would result to an employee if a prohibitory injunction were not issued due to the reasonable probability unlawful violence will occur in the future.’ [Citation.] On appeal, however, we review an injunction issued under section 527.8 to determine whether the necessary factual findings are supported by substantial evidence. [Citation.] Accordingly, we resolve all factual conflicts and questions of credibility in favor of the prevailing party, and draw all reasonable inferences in support of the trial court’s findings. [Citation.]” (*City of San Jose v. Garbett* (2010) 190 Cal.App.4th 526, 537-538 (*Garbett*).)

### ***B. Sufficient Evidence Supports the Order***

Barone's primary contention is that the evidence is insufficient to show she perpetrated any violence or credible threat of violence against any Plantronics employee. She disputes the Wilson family's claim that she forced her way into their home, and she challenges the credibility of their claims that they feared for their safety. She characterizes the family's declarations as fraudulent and "fabricated pretexts" for assaulting her when she entered the home. But under a substantial evidence standard of review, we defer to the trial court's resolution of factual conflicts and findings of credibility. (*Garbett, supra*, 190 Cal.App.4th at p. 538.) The trial court implicitly credited the Wilson family's description of events, and even Barone admitted to conduct that was angry, emotionally charged, and "hotheaded." "Unlawful violence" under section 527.8 includes "any assault or battery" under subdivision (b)(7) of section 527.8, and if the Wilsons' statements are credited, their declarations provide sufficient evidence to support a finding of assault or battery. (See *People v. Hernandez* (2011) 200 Cal.App.4th 1000, 1006 [even a slight touching may constitute a battery if it is done in a rude or angry way].)

Moreover, a "credible threat" of unlawful violence against an employee "to be carried out . . . at the workplace" may justify a permanent restraining order under section 527.8. (§ 527.8, subd. (a).) Barone does not dispute that Rick Guzman is a Plantronics employee, and that her e-mail to Plantronics threatened "a highly public ambush for them all at their place of work." Another e-mail to Plantronics stated, "Sicilian women tend to be highly protective of their family," and it included a rude cartoon image of a woman making obscene gestures. Together with the confrontation at the Wilson home, sufficient evidence supports a finding that Barone exhibited a threatening course of conduct towards Plantronics employees. Furthermore, the trial court—which noted that it had before it the matter of Dan Barone's lawsuit against Plantronics—expressed concern about the contentious nature of that litigation and the fact that it would be ongoing for

some time. The court noted, “I just think there are a number of things that are going to happen between now and a future date in conclusion with that case that do not need to involve the people that were in my view and in my evaluation of the evidence harassed here.” Sufficient evidence supports such a finding.

Barone points out that the Wilson family members are not employees and that therefore there is no threat of violence against them at the workplace. But subdivision (d) of section 527.8 provides: “In the discretion of the court, on a showing of good cause, a temporary restraining order or order after hearing issued under this section may include other named family or household members, or other persons employed at the employee’s workplace or workplaces.” Barone does not dispute that the Wilsons are family members of a Plantronics employee. Barone further contends that some of the protected employees no longer work at Plantronics. The trial court implicitly credited Plantronics’ claim that they were employees, and Barone cites nothing in the record showing otherwise. Finally, Barone contends Schlemmer is not entitled to protection because he is not a Plantronics employee but an attorney from the law firm of Morgan, Lewis & Bockius LLP. But the term “employee” as used in section 527.8 includes independent contractors. (§ 527.8, subd. (b)(3).) The trial court implicitly credited Plantronics’ assertion that Schlemmer is such an “employee,” and Barone cites nothing in the record showing otherwise.

For the reasons above, we find the trial court’s order was supported by substantial evidence. We conclude this claim is without merit.

### ***C. The Restraining Order Does Not Violate Barone’s Constitutional Rights***

Barone contends the restraining order constitutes a violation of her right to serve a summons for a legitimate labor dispute. She cites no source of law for the claim that the right to serve a summons is constitutionally protected, but she characterizes this conduct as constitutionally protected speech. Even assuming service of summons is entitled to protection under the First Amendment, Barone’s conduct here is not entitled to such protection. “[I]f the elements of section 527.8 are met by the expression of a credible

threat of violence toward an employee, then that speech is not constitutionally protected and an injunction is appropriate.” (*Garbett, supra*, 190 Cal.App.4th at p. 537.) Furthermore, the restraining order does not burden her statutory right to effect service of process. Plantronics’ law firm is authorized to accept service on behalf of all defendants in the employment lawsuit, so Barone can send any legal filings to the firm without violating the terms of the order.

For the reasons above, we conclude the trial court did not err in granting the restraining order. We will affirm the judgment.

### **III. DISPOSITION**

The judgment is affirmed.



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Greenwood, P.J.

WE CONCUR:

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Premo, J.

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Elia, J.